



Appeal Decision

Site Visit made on 22 June 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Appeal Ref: APP/Z1775/W/20/3263717

15 Montgomerie Road, Southsea PO5 1EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Simon Birmingham against the decision of Portsmouth City Council.
 - The application Ref 20/00349/FUL, dated 11 March 2020, was refused by notice dated 9 November 2020.
 - The development proposed is described as 'C4 use (house in multiple occupation) to Sui Generis (house in multiple occupation for more than 6 persons)'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. At the date of the application, the planning application 'Floor Plans'¹ (the floor plans) showed that the appeal property contained six bedrooms and the application form indicated that the change of use sought had not already started. The development includes the use of a first floor study as a seventh bedroom. At my site visit I was able to view the appeal property internally, with the appellant. I saw that the development had already occurred and I have therefore considered the appeal on this basis.

Main Issues

3. The main issues are:
 - whether the development provides adequate living conditions for its residents, in respect of indoor communal space, and whether it represents an over intensive use of the property; and
 - the effect of the development on the Solent Special Protection Areas.

Reasons

Living conditions

4. The appeal property is a mid-terraced house in multiple occupation (HMO) with accommodation arranged over three floors for seven residents. The Council has adopted an HMO Supplementary Planning Document² (HMO SPD) which seeks to ensure adequate living conditions for six or more residents of Sui Generis

¹ Drawing number PG.4122.19.5, Jan 20

² Houses in multiple occupation (HMOs) – Ensuring mixed and balanced communities, Supplementary Planning Document (SPD), October 2019

- (large) HMOs, such as the appeal property. I accept that it is 'guidance', as the appellant suggests. Nonetheless, it is the Council's most up-to-date expression of what it considers to be a good standard of living accommodation for the purposes of the relevant development plan policy in its first reason for refusal.
5. The HMO SPD floor area standards for a separate dining room, living room and kitchen total 39m². It anticipates less floor area (34m²) for a 'combined living space' which it defines to include 'a single, typically open plan space, usually including a kitchen, dining area and living area'. It is common ground between the main parties that the appeal property contains 30.55m² of communal living space and, on the evidence before me, I have no reason to disagree. It is provided in two separate ground floor rooms — a 'lounge' living room and an open plan 'kitchen/dining' room. Whilst both rooms remain physically unaltered by the development, by virtue of the increased number of bedrooms from 6 to 7, and albeit increasing the occupancy of the property by only one person, these communal rooms should nonetheless be adequate in size to provide a good standard of living accommodation for seven residents.
 6. The floor plans show that the size of the lounge is almost 12m². It is therefore appreciably below the requisite 14m² HMO SPD standard even for six residents. Furthermore, whilst this room is an efficient rectangular shape, has a window and the seating for six residents and other furniture fits within it, these furnishings are nonetheless reasonably closely arranged and take up a substantial part of this room. As a result, there is relatively little open space within the room to allow for its comfortable occupation by six residents, including convenient entry, egress and circulation, and moreover there is not enough seating for seven residents. This is still towards the lower end of occupancy for a Sui Generis HMO and residents may not often congregate at once in the lounge. However, introducing seating for the seventh resident, and the presence of this additional person, would materially reduce the spaciousness of this room. It would therefore result in an unduly cramped arrangement of furnishings and people that was not conducive to the function or use of this living room for socialising or entertaining, including guests.
 7. The HMO SPD does not provide clear guidance on a floor area standard for an open plan kitchen/dining room for six or more residents, which in this appeal, given the separate lounge, is not a 'living area'. The floor plans show a combined floor area of almost 19m² for this room. This would be significantly below the standard of 25m² that the Council suggests to me. However, there is no compelling explanation before me in this appeal to justify amalgamating the separate 11m² kitchen and 14m² dining room HMO SPD standards and, moreover, given that the HMO SPD entertains a lower standard for other sorts of combined living spaces.
 8. Contrary to what is shown in the floor plans, the layout of the dining area and the kitchen area in the appeal property is reversed and I note that the appellant has not indicated separate floor areas for each part of this room. Nonetheless, this kitchen/dining room is an efficient rectangular shape, well-lit and ventilated by windows and the kitchen end includes requisite worktops, cupboards and appliances. Although it is a through route to the dining area and to the back garden door, the kitchen area is not obstructed and the dining area at the other end is a complementary use. I therefore consider that the kitchen area is conducive to preparing meals and for laundry purposes by seven residents at once.

9. The dining table and seating for six residents fits within the dining area, albeit that these furnishings nonetheless take up a substantial part of this space, particularly across the narrower width of this part of the appeal property. As a result, there is just sufficient space at either end of the table to allow access to the far side seating and for its convenient use by six residents, though there is not enough seating for seven residents. I appreciate that all seven residents may not often gather at once to eat together. However, even if the existing table was pushed against a side wall and a seventh chair could be placed at the other end, this would significantly reduce the spaciousness of the dining area and result in an unduly cramped arrangement of furnishings and people that was not convenient or conducive to its intended function and use for consuming meals. Moreover, in my view, a smaller table might not provide sufficient space for seven residents or the length of a table turned through 90 degrees would likely impinge into the kitchen area or obstruct the back door.
10. The appellant has referred me to the Council's Standards for Houses in Multiple Occupation (the SHMO)³ and suggests that all seven bedrooms exceed 10m² floor area and that, on this basis, a communal space of 22.5m² for between 6 and 10 residents is exceeded at the appeal property. The SHMO applies to separate HMO legislative and regulatory requirements⁴. However, I note that this SHMO standard applies to a communal space combined in a single room, whereas the appeal property has a separate designated lounge. I also note that the appellant has included en-suite bathrooms in its calculation of bedroom floor area, whereas only one bedroom exceeds 10m², albeit marginally by 0.2m², not including its en-suite bathroom.
11. Notwithstanding the above, while all of the bedrooms exceed the HMO SPD minimum space standard for single bedrooms (6.51m²), I note that it does not explicitly include any provision for offsetting an over provision of bedroom space against a shortfall of communal living space. While I accept that some residents in HMOs may seek to use bedrooms in this way, in my view and for planning purposes, by virtue of its confined and bespoke use, en-suite bathroom floor area is not therefore available or useable as surrogate communal living space. Furthermore, in this appeal a second floor bedroom has considerably reduced headroom due to a sloping roof and all seven bedrooms have larger than single beds. While there is variation in the bedroom sizes, nonetheless, openness is as a result significantly reduced and consequently mitigates against the use of all of the bedrooms for socialising or entertaining in lieu of sufficient communal living space.
12. Considering the above, and notwithstanding my conclusions with respect to the kitchen area, I find that the development does not provide adequate living conditions for its residents, with regard to indoor communal space in the dining area and in the living room (lounge) and that its use by seven residents is an over intensive use of the property. Consequently, it does not accord with Policy PCS23 of 'The Portsmouth Plan' Portsmouth's Core Strategy, January 2012 (the PP). This policy includes that development must protect amenity and provide a good standard of living environment for residents and users. Nor does it accord with the HMO SPD in these respects. It also conflicts with the National Planning Policy Framework (Framework) paragraphs 127(a) and (f).

³ Standards for Houses in Multiple Occupation - A guide to understanding the basic standards for Houses in Multiple Occupation, September 2018

⁴ SHMO 'Introduction', page 1

These include that development should function well and create places with a high standard of amenity for existing and future users.

Solent Special Protection Areas (SPAs)

13. The appeal site is within 5.6km of the SPAs, which are European designated nature conservation sites with important coastal habitat for birds. Accordingly, a likely significant effect on the SPAs will occur from the increased population at the appeal site alone, or in combination with other plans and projects, who may visit the SPAs for recreation with the potential for more disturbance to birds; and, from nutrients⁵ in additional wastewater being discharged to the water environment of the Solent, causing eutrophication harmful to bird habitat in the SPAs. To seek to address these matters, the Council has adopted a Solent Recreation Mitigation Strategy, December 2019 (SRMS) and an Interim Nutrient Neutral Mitigation Strategy, November 2019 (INNMS). It considers that these strategies enable development in compliance with the Habitats Regulations⁶ and are approved by Natural England.
14. I note that the Council has carried out an Appropriate Assessment. I also note that the main parties agree that, subject to securing appropriate mitigation in accordance with the SRMS and the INNMS by a suitable planning obligation⁷, the development that has taken place would not have a significant adverse effect on the nature conservation interest and ecological integrity of the SPAs. I appreciate that, on this basis, Natural England did not object to the development. The Council has provided an incomplete and unsigned draft planning obligation template (in the form of a legal agreement) and 'anticipates' that, were I minded to allow the appeal, I should give the main parties notice and a further three weeks for the appellant to conclude a planning obligation with the Council. However, and while I understand that the appellant is 'happy to enter into a Section 106 Agreement and make the monetary contribution requested' by the Council and 'will look to do this throughout the appeal process', there is nonetheless no executed planning obligation before me to this effect in this appeal⁸.
15. I have considered the Council's alternative suggestion for a condition to secure SRMS and INNMS mitigation. Although it does not specifically refer to a planning obligation, the Council expects that mitigation 'is usually secured through a legal agreement' and, according to the SRMS and the INNMS, this is the mechanism through which a monetary contribution (or other suitable mitigation) is likely to be made. Planning Practice Guidance (PPG) advises that a negatively worded condition requiring the appellant to enter into a planning obligation is unlikely to be appropriate in the majority of cases⁹. Moreover, neither main party has suggested, let alone provided any clear evidence, that the delivery of the development in this appeal would otherwise be at serious risk or that it is a particularly complex development.
16. Notwithstanding the above, with regard to the INNMS, I note that the Council is uncertain that a monetary contribution — including as may be used to 'purchase 'credits' from the Council's Mitigation Credit Bank'— or indeed any other appropriate form of mitigation, can in fact be secured by the appellant.

⁵ Nitrates, nitrogen and phosphorus

⁶ The Conservation of Habitats and Species Regulations 2017

⁷ Section 106 of the Town and Country Planning Act 1990

⁸ Planning Inspectorate Procedural Guide Planning Appeals - England, March 2021 – paragraphs N.2.1 and N.2.2

⁹ PPG paragraph ID: 21a-010-20190723

Moreover, none has been demonstrated by the appellant in this appeal. Consequently, on the evidence before me, I consider that there is no 'reasonable prospect of mitigation being provided', as the Council otherwise suggests, through a planning obligation or a condition. Accordingly, there are no exceptional circumstances for me to delay the issue of my decision while the appellant seeks to complete a suitable legal agreement with the Council.

17. Considering the above, I cannot be confident or certain that the necessary mitigation will be secured. In the absence of appropriate mitigation, I find that the development has an adverse effect on the integrity of the SPAs. Consequently, it does not accord with PP Policy PCS13. This policy includes that green infrastructure will be protected, including by refusing development that has an adverse effect on a European site. Nor does it accord with the SRMS and the INNMS in these respects. It also conflicts with Framework paragraphs 170(a) and (d) and 175(a). These seek to protect and minimise impacts on sites of biodiversity value and set out that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, planning permission should be refused.

Other Matters

18. The appellant says that the appeal property has an HMO licence for seven residents. However, I am required to consider the development against the development plan and relevant planning policies¹⁰. Accordingly gaining a licence under the Housing Act 2004 does not mandate approval for planning purposes and I therefore attach little weight to this consideration. The accommodation is to a high standard and specification and there is no harm to the living conditions of the occupiers of other houses or to the character and appearance of the area. However, these considerations are a neutral factor in my decision and do not therefore outweigh the conflict with the development plan and the Framework that I have identified in the main issues above.
19. With regard to living conditions, the appellant¹¹ and the Council¹² have referred me to some previous HMO appeal decisions. I am not aware of the full details of any of these cases. However, the provided decision letters confirm that these properties had a single combined communal living space and consequently these decisions can be distinguished from the case before me. The appellant has also referred to another appeal at 66 Margate Road but on the very limited information provided it is unclear whether it is directly comparable. I have, in any event, reached my own conclusions on the development before me and its individual planning merits.

Conclusion

20. For the reasons given above, I conclude that the appeal does not succeed.

Robin Buchanan

INSPECTOR

¹⁰ Section 38(6) of the Planning and Compulsory Purchase Act 2004

¹¹ APP/Z1775/W/20/3246262, APP/Z1775/W/20/3246266, APP/Z1775/W/20/3246589

¹² APP/Z1775/W/20/3248561, APP/Z1775/W/20/3247887, APP/Z1775/W/20/3253203, APP/Z1775/W/20/3256990